

## **APPENDIX 3.5.1. TO THE NETWORK STATEMENT**

# **CONTRACTUAL CONDITIONS COMMON TO ALL CONTRACTS FOR THE USE OF SERVICE FACILITIES**

## THE FOLLOWING IS FIRST OUTLINED:

In order to meet the operational needs of users of the national rail network so as to perform their rail activity, SNCF Réseau allows them to use its Service Facilities to conduct operations linked with their activity.

This document sets out all the contractual conditions common to all **Contracts for the Use of SNCF Réseau's Service Facilities (IS) available** to any Applicant wanting to use the commercial sidings (without any associated buildings or equipment), freight yards or rail infrastructures of the combined transport terminals such as defined in the NS.

Any use of a Service Facility whatsoever, is governed by these "**Common Contractual Conditions**" which form the contractual basis to which is added a "*National Contract*" for each type of Service Facility, except gravity marshalling yards, supplemented by a "*Local Contract*" for the specificities of each Service Facility concerned.

Therefore, in order to use a Service Facility, SNCF Réseau and the user are contractually bound by the three following documents:

- The Common Contractual Conditions which apply to all Service Facilities,
- the Provisions of the National Contract which apply to the category of Service Facility (sidings except for gravity marshalling yards, freight yards, combined transport terminals),
- the provisions of the Local Contract which apply to the Service Facility concerned.

The objective is to set a stable contractual framework to enable SNCF Réseau and the user to work mainly on the Local Contract alone, which only aims to introduce specific elements (term, practical conditions of access, level of the charges associated with the use of the Service Facility, etc.).

The terms used in these Common Contractual Conditions, refer to:

- "**SERVICE FACILITY (IS)**": land, buildings and equipment, especially designed, either partially or fully, to enable the provision of one or more services within the meaning of Decree No. 2012-70 as modified.
- "**BENEFICIARY**": natural or legal person, whether public or private, authorised to use the Service Facilities to carry out the activities it has indicated.
- "**SNCF RÉSEAU**": manager of the national rail network in compliance with Article L. 2111-9 of the Transport Code. All notifications and requests must be transferred to the appointed SNCF Réseau representative set out in the National Contracts.
- "**Recurrent use of an SF**": a Service Facility is considered as being used recurrently as soon as its use is scheduled on a regular basis. This basis may be permanent and run either for the whole duration of the timetable or part of it.

The above definitions are also valid for the National and Local Contracts.

SNCF Réseau notes that its choice to sign a contract with the BENEFICIARY was motivated in light of the rail activity the latter intends to develop within the Service Facility it was granted use of. This clearly stated intent of the BENEFICIARY is an essential and determining condition in SNCF Réseau's commitment in its favour.

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# I. GENERAL PROVISIONS FOR THE USE OF THE SERVICE FACILITIES

## Article I. LEGAL FRAMEWORK

In accordance with Article L.2111-9 of the Transport Code, SNCF Réseau has the task of *“performing the following services, in line with the principles of public service, for the purposes of promoting rail transport in France and according to a sustainable development rationale: [...]The management of the Service Facilities it owns and their exploitation”*.

Any BENEFICIARY, fulfilling the conditions set out in **§ 2.2.2 of the Network Statement (NS)** for railway undertakings and **§ 2.3.1.2 of the NS** for all other applicants, may request access to and use of the Service Facilities described in **§ 3.6 of the NS**. The access and use is conducted in the conditions set out in Decree No. 2012-70 of 20 January 2012 relating to passenger stations and to other service infrastructures on the rail network, in its version amended by Decree No. 2016-1468 of 28 October 2016 pertaining to the access to the service facilities connected to the rail network and to the services provided by Service Facility operators and laying down various provisions in terms of rail transport.

## Article II. COMPLIANCE WITH LAWS AND REGULATIONS

The **BENEFICIARY** shall be required to comply with the laws and regulations in force, in particular those concerning:

- the police and railway security,
- the traffic, the standing and the garage of vehicles in the public domain rights of **SNCF RÉSEAU**,
- urban planning and construction, classified installations for the protection of the environment and regulations on noise,
- dangerous goods

The **BENEFICIARY** shall bear alone the obligation to complete all administrative and police formalities and to obtain all permits necessary to exercise its activity. The BENEFICIARY is hereby informed that the refusal of the competent authorities to grant said authorisations or the conditions to which they are subject may not entail **SNCF RÉSEAU**'s liability.

## Article III. CONTRACTUAL DOCUMENTS

The use of a Service Facility is governed by the following documents, in decreasing order of priority:

1. The Network Statement in force and the provisions of its appendices which concern the service facilities;
2. These Common Contractual Conditions;
3. The National Contract and its appendices;
3. The Local Contract and its appendices;
4. the local operating document and where applicable, the prevention plan;
5. any technical documents.

Any reference to the **Contract for the Use of a Service Facility** or **Contract** is understood to be a reference to all of the documents listed above.

The signature of the above-listed documents (for the documents requiring signatures) takes priority over all documents and correspondence previously exchanged between the parties.

#### **Article IV. TYPE OF PROVISION**

It is expressly agreed between the parties that the authorisation to use the Service Facility materialised by these Common Contractual Conditions, the National Contract and the Local Contract, was concluded taking into account the credibility of the usage request submitted by the BENEFICIARY.

Thus, the BENEFICIARY commits to inform SNCF Réseau as soon as possible of any change in its business, legal or financial situation.

The BENEFICIARY may not assign, totally or partially, either against payment or otherwise, its authorisation to use the Service Facility materialised by these Common Contractual Conditions, the National Contract and the Local Contract, without the prior written approval of SNCF Réseau.

Any transfer shall be subject to a prior written additional clause defining the conditions and procedure of the said transfer.

The transferor shall be liable for all invoices regarding services that have been provided before the Contract transfer date.

Non-compliance with the stipulations of this article shall rightfully terminate this Contract.

#### **Article V. DOCUMENTATION AND INFORMATION**

The details of the contact persons appointed by the parties are set out in the National and Local Contracts.

If meetings need to be held, they may be called at the initiative of either party. Any meeting called by a party shall be subject to the sending out of an agenda by the party initiating said meeting at least one week in advance and the latter shall produce minutes of the meeting which must be signed by both parties.

Each party shall communicate to the other party all the information required for the proper performance of the contractual documents set out in Article III. More specifically, each party commits to inform the other in writing, so as to be able to certify the date (email or RLAR), of any events or facts likely to affect the performance of the National Contract and Local Contracts.

The documents exchanged between the parties shall be written in French and provided in the format(s) requested by SNCF Réseau, usually those used by the latter to perform the National Contract and Local Contracts.

With regard to the above, the BENEFICIARY may request the documentation concerned in a format that it is able to use (paper or electronic submission). SNCF Réseau shall issue a favourable response where possible.

Any documentation or information required for the performance of this Contract, as well as the National and Local Contracts, is supplied free of charge for the parties, unless otherwise specified in one of these Contracts.

## II. PROVISIONS FOR THE USE OF THE SERVICE FACILITIES

### Article VI. CONDITIONS FOR THE USE OF THE SERVICE FACILITIES

#### By the BENEFICIARY

**THE BENEFICIARY formally commits to never use the Service Facility for any other purposes, nor in other conditions than those set out under the National and Local Contracts concluded with SNCF Réseau.**

Any change of activity in one or more areas of the Service Facility used is forbidden without the prior written agreement of SNCF Réseau.

#### Use by a subcontractor, agent or representative

The use of a Service Facility by any subcontractor, agent or representative is authorised by SNCF Réseau under the conditions set out in the National and Local Contracts for each Service Facility.

### Article VII. REQUIREMENTS FOR THE USE OF THE SERVICE FACILITIES

The BENEFICIARY commits to only use rolling stock compatible with the Service Facilities and compliant with the provisions of the local operating document. It must be able to prove its compliance with this obligation at any time on request.

The BENEFICIARY shall make sure it conducts its operational management, rail production and stabling operations in strict compliance with safety measures.

As a reminder, the BENEFICIARY must comply with the applicable rules set out in the document RFN-IG-TR-1 A 00-No.004 "Use of sidings".

For the entire duration of the BENEFICIARY's presence on SNCF Réseau facilities, the former shall apply the regulatory provisions in force on the site and comply with any instructions given by the SNCF Réseau Manager (or the latter's appointed substitutes, where applicable).

The BENEFICIARY shall be liable for securing its property.

The Service Facilities are maintained by SNCF. However, the BENEFICIARY shall bear and conduct any cleaning operations it deems necessary for the proper use of the Service Facilities (including clearing the facilities of snow, thawing any devices the BENEFICIARY needs to operate, removing dead leaves, weeds and detritus in the way).

At the end of each period of use of the Service Facility under the Local Contract, no rolling stock, property used and/or merchandise handled by the BENEFICIARY (and/or by any service providers, sub-contractors or customers likely to access the facilities) may remain in the facilities.

In the event that SNCF Réseau should notice the presence of rolling stock or property used by the BENEFICIARY and/or by any service providers, sub-contractors or customers, left in the Service Facility subject to a Local Contract, and after having requested that the



BENEFICIARY remove said property, SNCF Réseau may remove or provide for the removal of the property in question at the expense of the BENEFICIARY. SNCF Réseau shall inform the BENEFICIARY of the location to which its property has been moved, and cannot be held liable for the custody and/or any damage to this property. This operation shall be invoiced to the BENEFICIARY.

Service Facilities may be used by other BENEFICIARIES. As a result, the Service Facilities set out in the Local Contracts in question must be left clean at the end of each time slot of use so that they can be used correctly.

In the event that SNCF Réseau should notice that the BENEFICIARY has left any dirt or deposits (fluid spills, transported material that has fallen while being unloaded, etc.) that prevent the proper use of these facilities, it may either clean them itself or have them cleaned. This operation shall be invoiced to the BENEFICIARY.

### **Article VIII. INSPECTION RIGHTS**

As part of the tasks imposed by the laws and regulations, and in particular as an owner of the railway public domain, SNCF Réseau may, at any time, in any location and without notice, intervene in its Service Facilities to make sure the BENEFICIARY complies with its obligations, and in particular those linked to safety as well as those set out in the National and Local Contracts. These interventions can be carried out by SNCF Réseau's authorised personnel or by any other person or body appointed by it and may take place any time during the service provision.

The BENEFICIARY shall inform its staff and any service providers of this inspection right and shall ensure that SNCF Réseau, or any entity appointed by it, is able to exercise this right.

Any observations or failures noted during these inspection visits shall be communicated by SNCF Réseau to the BENEFICIARY by registered letter with acknowledgement of receipt.

### **Article IX. SCHEDULING THE USE OF THE SERVICE FACILITIES**

The scheduling of the use of the Service Facilities is specific to each type of facility. The terms are set out in the NS and the National Contracts.

Where applicable, the expenses incurred by the scheduling are due as soon as the request is instructed by SNCF Réseau.

### **Article X. LENGTH**

These Common Contractual Conditions apply over the same term as the NS to which they are subject.

The period of use for a Service Facility is set out in the Local Contract, in compliance with the provisions applicable to the NS.

The Contracts for the Use of Service Facilities cannot in any case be automatically renewed.

It is recommended the BENEFICIARY proceed with their request, where possible, three (3) months before the date on which the contract expires, in order to ensure that their file is processed.

### III. FINANCIAL PROVISIONS

#### **Article XI. USE CHARGE**

The BENEFICIARY shall pay SNCF Réseau a use charge, the amount of which is established in compliance with the charging principles set out in Chapter 6 of the NS and in Appendix 6.1.2, and is also set out in the Local Contract.

#### **Article XII. INVOICING**

Invoices shall be sent out by mail.

On principle, the charge is due monthly and in advance, at the beginning of each month throughout the year, starting from the implementation date of the Local Contract. The National and Local Contracts may derogate to this rule in certain special cases.

For the period between the date of entry into force and the end of the current calendar month and for the period between the start of the current calendar month and the end of the Local Contract, the BENEFICIARY shall settle the basic monthly charge calculated according to the time of use for the portion of the month.

#### **Article XIII. SETTLEMENT**

##### **Settlement date**

Invoices are payable within forty (40) days of issue (date shown on the invoice). Settlements are paid by bank transfer to a bank account shown on the invoice or by direct debit. SNCF Réseau shall not grant any discount for early settlement.

The BENEFICIARY commits to inform SNCF Réseau of any change in its invoicing address.

##### **Direct debit**

In order to facilitate the collection of all the amounts owed by the BENEFICIARY to SNCF Réseau under this Contract, the BENEFICIARY may authorise SNCF Réseau, or any duly authorised person, to withdraw all the amounts due to SNCF Réseau from its bank account when they are due.

The BENEFICIARY shall provide SNCF Réseau with a duly completed and signed SEPA (European) direct debit mandate, on the signature day of this Contract.

The BENEFICIARY shall ensure that there is a sufficient balance in its account to meet the withdrawals. The withdrawal shall take place on the date on which the invoice is due.

Should the direct debits be rejected on the scheduled withdrawal dates, the BENEFICIARY shall bear the charge for the rejection of the direct debit.

In the event of a change to its banking information, the BENEFICIARY undertakes to inform SNCF Réseau of its new bank details within fifteen (15) days before the next due date.

## **Article XIV. FINANCIAL GUARANTEE**

### **Provision of the financial security**

A security deposit or a bank guarantee on first demand shall (if necessary) be provided by the BENEFICIARY to SNCF Réseau within eight (8) calendar days of the receipt of the request, in the event that non-payment attributable to the BENEFICIARY is detected.

This is characterised by the non-payment (either total or partial) of an invoice on the due date, followed by one or more reminders and the failure to settle this invoice in the time frame set out in the formal notice.

If the financial security is not provided within the set time frame, the National and Local Contract(s) for each Service Facility concerned may be rightfully terminated.

The BENEFICIARY may choose to:

- ✓ pay as a security deposit, by cheque, giro or bank transfer to an bank account held by SNCF Réseau (details provided in the National Contract), an amount corresponding to 3 months' use charges calculated based on the reserved capacity; this deposit shall be remunerated at the EONIA rates, with interest due at the end of every month. The BENEFICIARY shall specify into which account it wishes this to be paid.
- ✓ or provide a bank guarantee on first demand from a well-known financial institution, included in the latest version of the list of credit institutions bound by the French Monetary and Financial Code and with headquarters in France, for the duration of the Local Contract increased by two (2) months and as security for an amount specified in the Local Contract and calculated on the basis of one (1) month of invoicing.

If the BENEFICIARY decides to provide a bank guarantee on first request, it must use the template specified in Appendix 1 to these Common Contractual Conditions and produce the original of the bank guarantee on first request.

The settlements of the non-payment(s) and the provision of the financial security by the BENEFICIARY determines the continuation of the National and/or Local Contracts for each Service Facility concerned, which may be suspended as a result of the BENEFICIARY's failure to meet its obligation to pay for the service.

The BENEFICIARY may replace one security for another at any time.

### **Implementation of the financial security**

In the event of non-payment, SNCF Réseau may rightfully implement the financial security, i.e. call on all or part of the amount guaranteed in the bank or withdraw all or part of the amount provided as a deposit, insofar as the amount remains unpaid, even after a formal notice, sent to the BENEFICIARY by registered letter with acknowledgement of receipt, remained unheeded after the period set out in said formal notice.

## Updating the amount of the financial security

If any non-payment has forced SNCF Réseau to implement the financial security, the BENEFCIARY undertakes to immediately refresh the amount of the financial security to the level initially established or to provide a new financial security to SNCF Réseau within one (1) month of the date on which the guarantor made payment or the sum provided as a deposit was withdrawn. If the financial security is not refreshed or renewed within the deadline stipulated above, the Contract may rightfully be terminated.

## Returning the financial security

At the end of the Contract and subject to the full payment of invoices, SNCF Réseau shall return (where necessary):

- Either the bank guarantee against a receipt within a maximum of one (1) month;
- Or (in the event of a security deposit in a bank account), the amount in the bank account, including the remuneration of the deposits net of the applicable bank, social and tax charges within a maximum of one (1) month.

## Article XV. LATE PAYMENTS AND COMPLAINTS

### 15.1 Late payments

If settlement is not made on the set due date, the BENEFCIARY shall be liable to SNCF Réseau for late payment interests.

Amounts not paid by the payment deadline indicated on the invoice are automatically increased by interests for late payment without the need to issue a summons or send any formal notice to the BENEFCIARY and whatever the cause of late payment. Interest capitalisation shall take effect as of right.

In accordance with the provisions of Article L441-6 (L 441-10.II as of 1 March 2020) of the French Commercial Code, the rate to be used for the calculation is the interest rate applied by the European Central Bank to its most recent refinancing operation, plus ten percentage points, this sum not being less than three times the legal rate of interest.

The interest for late payment is calculated as follows:

$$I = M \times T \times N/A$$

I represents the interest for late payment

M represents the tax settled late

T represents the interest rate

N the number of days the payment is delayed inclusive, between the date payment is made and the deadline for payment + 1 day

A represents the number of days in the calendar year

Invoices for interest for late payment are due on receipt.

However, an additional ten days, from the date the invoice is issued to account for the sending of the invoice, is granted for settlement.

### **- If payment by cheque**

Amounts not paid by the payment deadline indicated on the invoice are automatically increased by late payment interests accrued starting from the day following the payment due date, until the effective payment date according to the interest rate set out above. Interest capitalisation shall take effect as of right.

***- If payment by direct debit***

Should the direct debits be rejected or differed on the withdrawal dates scheduled by SNCF RÉSEAU, the amounts due shall automatically be increased by interest rates accrued starting from the day following the payment due date, until the effective payment date according to the interest rate set out above. Interest capitalisation shall take effect as of right.

## **15.2 Complaints**

Any complaint relating to the execution of this Contract must be communicated to SNCF Réseau in accordance with the procedure described in Appendix 7 to the NS in force.

In the event of compensation being due from SNCF Réseau, it shall be paid following the signature of a compensation agreement between SNCF Réseau and the candidate.

Payment of compensation shall represent the single and final settlement for all the prejudice suffered by the candidate. In return for the payment of such compensation, the candidate shall renounce all another claims or legal action in connection with the particular occurrence.

## IV. LIABILITY AND INSURANCE

### Article XVI. LIABILITY AND INSURANCE

#### Liability between the parties

Under common law, each party assumes liability for any physical injury or property damage they have caused to third parties, including the customers of the BENEFICIARY or any other BENEFICIARIES that may be present on the site.

The parties shall under no circumstances replace the other party in the execution of the obligations that it has contractually agreed upon regarding third parties.

#### Liability of SNCF Réseau with regard to the BENEFICIARY

##### - Conditions in which liability shall be incurred

SNCF Réseau shall assume liability for injury or property damage caused to the BENEFICIARY if the damage is attributable to its fault or to the fault of any person for whom it is liable.

Specifically, SNCF Réseau undertakes to reimburse the BENEFICIARY the amounts it may have had to pay to one or more of its staff members due to damage caused by its fault or the fault of any person for whom it is liable.

##### - Limits of liability

SNCF Réseau shall under no circumstances assume any liability for immaterial damage such as financial or commercial prejudice, loss of customers, commercial inconvenience, increases in costs and overheads, loss of profits, damage to brand image and operating losses that could result from accidents or damage suffered by the railway undertaking.

##### - Temporary failure to access the facilities

Should it become temporarily impossible to access the Service Facilities for a reason attributable to SNCF Réseau, the latter commits to implement every effort to offer an alternate short-term solution to the BENEFICIARY.

The corresponding portion of the charge shall not be invoiced.

However, SNCF Réseau shall under no circumstances assume any liability for immaterial damage such as financial or commercial prejudice, loss of customers, any commercial inconvenience, increased costs and overheads, loss of profits, damage to brand image and operating losses that could result from this temporary impossibility to access the premises.

#### Liability of the BENEFICIARY with regard to SNCF RÉSEAU

##### - Conditions in which liability shall be incurred

The BENEFICIARY shall assume liability for physical injury or property damage caused to SNCF Réseau if the damage is caused by its fault or the fault of any person for whom it is liable or by any item in its custody, or if it results from non-compliance with the conditions for the use of the Service Facilities.

The BENEFICIARY undertakes to reimburse SNCF Réseau the amounts that SNCF Réseau may have had to pay to one or more of its staff members due to damage caused by its fault or the fault of any person for whom it is liable.

It should be noted that any use of the Service Facilities by the BENEFICIARY outside of the contractually agreed timetable sections and any use of the Service Facilities on sites other than those subject to a Local Contract is an improper use and constitutes a fault.

However, in situations where the Service Facilities need to be accessed as an emergency (the latter must be duly justified by the BENEFICIARY), this shall not be deemed a fault, and the use thereof shall be settled by SNCF Réseau subsequently.

The BENEFICIARY undertakes to use the Service Facilities allocated in such a way that they only withstand normal wear in relation to the activity performed.

### **- Limits of liability**

The BENEFICIARY shall under no circumstances assume any liability for immaterial damage such as financial or commercial prejudice, loss of customers, any commercial inconvenience, increased costs and overheads, loss of profits, damage to brand image and operating losses that could result from accidents or damage suffered by SNCF Réseau.

#### **1) Transport of dangerous goods and exceptional consignments**

Refer to the National and Local Contracts. The terms "exceptional consignment" and "dangerous goods" shall be understood in the meaning established in the Network Statement in force.

#### **2) Insurance or equivalent measures**

The BENEFICIARY shall undertake to take out and maintain insurance cover throughout the period during which it shall use the Service Facility, or a policy or measure equivalent to that imposed under a railway undertaking licence, to cover all the financial consequences of its liability towards SNCF Réseau or third parties.

#### **3) Hardship clause**

If the economic, political, financial or technical conditions that prevailed upon concluding the Common Contractual Conditions, the National Contract or the Local Contract should have changed to such an extent that the balance of the contract is upset, new conditions that are satisfactory for both parties shall be negotiated. If no agreement can be reached in the two months following notification by the injured party to the other party requesting the negotiation of the new conditions, the injured party may terminate the Local Contract as well as the Common Contractual Conditions and the National Contract attached thereto, immediately, without this termination giving rise to compensation.

As regards the Public Liability insurance, the minimum amount to be insured by the BENEFICIARY is set to one (1) million Euro per claim, it being specified that this cannot in any circumstances constitute a limitation of liability.

As regards the **Property Damage insurance policy**, the policy must be guaranteed to the replacement cost (the insured values set out in the Contract must expressly refer to the reinstatement value of the premises occupied), with full and absolute derogation to the proportional rule for the insured values, and with indexation of the policy amounts according to the variations in the construction cost index published by the French national building federation (FNB) or the "Industrial Risks" index (RI), published by the plenary assembly of insurance companies, or any replacement indices.



## **Article XVII. OBLIGATIONS OF THE BENEFICIARY IN THE CASE OF AN INSURANCE CLAIM**

### **Insurance claim declaration**

The BENEFICIARY must:

- inform SNCF Réseau without delay of any damage sustained or caused on the sidings made available for its current operational use;
- submit all claims to the relevant insurance companies, under the conditions and time frames set within each insurance policy. SNCF Réseau hereby provides the BENEFICIARY with the authority to make these declarations.

The BENEFICIARY commits to assign the compensation received to repairing the sidings concerned.

The BENEFICIARY shall keep SNCF Réseau regularly informed of all its actions and the follow-up of the settlement of the claim.

All costs, fees and expenses of any kind, which may be due as a result of the fulfilment of the obligations mentioned above, shall be borne by the BENEFICIARY (without any prejudice to the latter's ability to seek recourse against the persons responsible for the damage).

### **Claim settlement**

If a claim arises, SNCF Réseau will restore the damaged premises with the same technical characteristics and quality of materials than the initial premises, to the BENEFICIARY's expense if it is established that it is liable for the damage.

## V. END OF CONTRACT

### **Article XVIII. RELEASE OF THE SERVICE FACILITIES BY THE BENEFICIARY**

If, during the period of use, the Beneficiary is able to release some capacity in the Service Facilities contracted by it, it shall inform SNCF Réseau as soon as possible so as to enable the infrastructure manager to reallocate said capacity.

### **Article XIX. TERMINATION OF THE NATIONAL OR LOCAL CONTRACTS**

19.1. In the event of serious or repeated failure on the part of one of the parties to the Contract to meet any one of its essential obligations under the laws and regulations in force or under the terms of the Contract, the other party may serve notice by means of a registered letter with acknowledgement of receipt demanding that an end be put to such failure within a maximum of fifteen (15) days and that all measures be deployed to ensure that such behaviour not recur.

If at the end of this period the situation has not been put to rights or if suitable arrangements have not been adopted to this end, the other party may rightfully terminate the contract, without prejudice to all the damages and interest it may be entitled to claim.

19.2. This Contract shall be rightfully terminated by SNCF Réseau, in full or in part, by means of a registered letter with acknowledgement of receipt, without prejudice to all the damages and interest or the complete settlement of the sums due it may be entitled to claim and without the candidate being entitled to compensation, in the following cases:

- for the railway undertaking, loss of its railway operator's licence or safety certificate;
- if the candidate can no longer meet its payments or is placed in the hands of a receiver;
- failure to pay the charges due for the use of the Service Facility.

19.3. The applicant may also terminate the contract through a registered letter with acknowledgement of receipt, if it no longer wishes to use the facilities, subject to the provision of one (1) months' notice and the complete settlement within this period of the sums due to SNCF Réseau on the date on which such termination shall take effect.

### **Article XX. RELEASE OF THE PREMISES**

Refer to Article VII.

## VI. MISCELLANEOUS PROVISIONS

### **Article XXI. CHANGES TO THE SERVICE FACILITIES AND THEIR ACCESS CONDITIONS**

#### **Construction, development and scheduled maintenance**

In order to carry out construction, development or maintenance work on the Service Facilities belonging to it, SNCF Réseau may temporarily be required to suspend the performance of all or part of a Local Contract.

If this work will significantly disrupt the use of the Service Facility, SNCF Réseau undertakes to warn the BENEFCIARY as soon as it is aware of the corresponding schedule, before starting the works, and to inform it of the likely duration of this work. Together with the BENEFCIARY, SNCF Réseau shall endeavour to find a solution, where this is possible in terms of the technical and economic schedule, that minimises the impact for all the BENEFCIARIES.

No compensation may be claimed by the BENEFCIARY from SNCF Réseau because of the unavailability of the Service Facilities during these scheduled works of which it was duly informed.

#### **Unscheduled restoration**

In the event of a failure preventing the safe use of all or part of a Service Facility, SNCF Réseau may suddenly be obliged to close off access to it or forbid its use, without prior notice, for the time required to restore it. SNCF Réseau shall inform the BENEFCIARY as soon as it becomes aware of the situation and shall make sure to consider the possible solutions with it.

Except in the case of duly proven fault on the part of SNCF Réseau and a duly justified injury to the BENEFCIARY, no compensation may be claimed from SNCF Réseau because of unscheduled works to restore the facilities to working order.

#### **Temporary closure of the Service Facility or one of its constituent parts**

Under exceptional circumstances, specifically at the request of the police or in the event of proven danger to the safety of people or property, all or part of a Service Facility may be temporarily closed. SNCF Réseau shall inform the BENEFCIARY as soon as it becomes aware of the situation and shall make sure to consider the possible solutions with it.

Except in the case of a duly proven fault on the part of SNCF Réseau and a duly justified injury to the BENEFCIARY, no compensation may be claimed from SNCF Réseau because of unscheduled works to restore the Service Facilities to working order.

#### **Force majeure and similar events**

A case of force majeure shall be any irresistible, unpredictable event outside the control of the parties to the contract, making it impossible for one or the other of them to fulfil its obligations in full or in part.

Moreover, within the meaning of these Common Contractual Conditions, the following events shall be deemed to explicitly constitute events that are similar to cases of force majeure:

- accidental occurrences (such as fire, explosion, collision with road vehicles, suicides and attempted suicides, collisions with people or animals on railway property, etc.) or acts of wilful or criminal damage (sabotage, vandalism, etc.) ascribable to third parties;
- natural disasters or weather-related phenomena (frost, snow, heat waves, floods, storms, etc.) of an intensity and/or on a scale deemed exceptional by comparison with normal conditions in metropolitan France;
- any strikes among the personnel of the railway and action taken on such occasions. Other than in cases falling into the context of force majeure as recognised by the Cour de cassation (Court of Justice) in its judgement dated 11 January 2000 (appeal no. 97-18215), the railway undertaking and SNCF Réseau will not be allowed to use strikes among the members of their own workforce as an argument to escape from their obligations under this Contract”];
- measures taken or demanded by the public authorities for reasons linked with national defence, public or civil safety or by the judicial authorities or the fire and emergency services, and the inconvenience caused by their operations.

The parties to the contract shall incur no liability and shall have no obligation to repair the damage suffered by one or the other because of failure to perform or deficient performance of all or part of their obligations, if such failure to perform or deficient performance is due to the occurrence of an event falling into the category of force majeure or a similar event.

The contractual obligations that cannot be performed because of a case of force majeure or a similar event shall therefore be suspended throughout the duration of the said event.

The party reporting a case of force majeure or a similar event shall be obliged to deploy all the resources at its disposal to limit the scale of the event and its duration. Any party which, by action or omission, has aggravated the consequences of the event shall only be entitled to invoke the event with respect to those effects that would have occurred, if such action or omission had not taken place.

If an event lasts for more than one (1) month and affects the execution of the Contract in its entirety, either party may terminate said Contract, without the other party being entitled to compensation of any sort, by sending the other a registered letter with acknowledgement of receipt. Termination shall come into effect on expiry of a period of (15) calendar days from the date on which the said letter was despatched.

In the event that the Contract is not affected in its entirety by the event, the Parties shall come together to determine in good faith which obligations may be considered to be terminated and the concrete conditions governing this termination.

## **Article XXII. CONFIDENTIALITY**

Without prejudice to the exchange of information strictly necessary between SNCF Réseau and the BENEFICIARY as part of the meetings held to execute this Contract, both SNCF Réseau and the BENEFICIARY undertake to refrain from disclosing to any third party, in any form (whether spoken or written), any confidential information, regardless of the medium (specifically, paper, electronic or digital storage device).

The term “confidential information” refers to the following in particular:

- the content of the Contract;
- any document or information disclosed by a party during the period of validity of the Contract, regardless of the medium (verbal, written, digital, etc.), including, without limitation, all information, documents or data whether economic, technical, commercial, operational, strategic or other in nature, concerning the activity, customers, operational processes or methods, current or future of the candidate and of SNCF Réseau and any disputes that might arise between the parties regarding this Contract and its execution, and any document or information labelled as such by either party.

Both during the service ordering phase and the execution of the contracts and for two (2) years following their expiry (regardless of the reason), the parties mutually undertake, with regard to confidential information received from the other party:

- (i) to protect it and keep it strictly confidential;
- (ii) not to disclose them to third parties without the explicit prior written consent of the other party;
- (iii) only disclose it to members of their staff (employees, subsidiaries or service providers, including subcontractors) to whom this disclosure is necessary for the execution of the Contract;
- (iv) to limit its use to what is strictly required for the execution of the Contract obligations.

Therefore, the parties shall take all necessary steps to ensure that their employees, managers, administrators, personnel and service providers that may have knowledge of confidential information as part of their duties are informed of this confidentiality requirement and comply with its content.

All confidential information communicated between the parties, regardless of the format and medium, shall remain the property of the disclosing party.

These provisions shall not apply to information which:

- i. has fallen into the public domain (through no fault of the recipient);
- ii. was already known to the recipient in good faith before being communicated as part of the Contract. This knowledge must be proven by the existence of appropriate documents within the recipient's files;
- iii. has been disclosed to a third party or a public authority in accordance with legal or regulatory requirements or in execution of a court order. Specifically, the duty of confidentiality shall not apply in the event that the information or the document is revealed to exercise its rights or claims before the Railway and Road Regulation Authority, the competition authority or any other court.

## **Article XXIII. OWNERSHIP**

These Common Contractual Conditions, the National Contract and the Local Contracts shall in no way confer any real rights on the public domain nor effect any transfer of ownership to the BENEFICIARY.

## **Article XXIV. MODIFICATIONS**

In the event of a modification to the legislative and regulatory framework, or if there is an arbitration or judicial settlement, or any modification to the applicable NS concerning the use of the Service Facilities, the parties undertake to introduce any adaptations required to these Common Contractual Conditions, the National Contract and the Local Contract, if necessary.

If the decisions mentioned above should be cancelled, in whole or in part, the applicable provisions shall revert to those initially in place before modification.

Once the Local Contract is signed, SNCF Réseau may still update, where required, the local operating document and any technical documents depending on the applicable legal and regulatory provisions, including the provisions of the Network Statement.

## **Article XXV. OBLIGATIONS REQUIRED AS REGARDS DEFENCE, PUBLIC SAFETY AND SECURITY**

SNCF Réseau may have to modify or suspend the execution of these Common Contractual Conditions, the National Contract or the Local Contract in application of the Transport Code, the Defence Code or any other applicable text.

As part of the security policy for the sites on which the Service Facilities are located, the BENEFICIARY shall be responsible for organising the security of its staff, customers and property. Police services and gendarmerie officers shall have jurisdiction to take any action on SNCF Réseau premises.

In the cases listed under Article L.2221-2 of the Defence Code and according to the provisions of Article L.2223-12 et seq. of the same Code, and when required in the interests of national safety and security, SNCF Réseau may have to provide the services governed by this Contract to the national defence and safety authorities requiring them as a priority.

Similarly, in situations in which national safety, national security or public health are at stake, particularly due to law enforcement operations, disruptions to the execution of the stipulations of this Contract may be caused; these are beyond the control of SNCF Réseau, which shall do its utmost to fulfil to the best of its ability its obligations under this contract.

Each party shall be responsible for its obligations towards the administrative, legal, and military authorities and the police. It shall keep abreast of the security measures that may be imposed on it by the public authorities, particularly with regard to anti-terrorist or health measures.

The BENEFICIARY acknowledges and accepts that SNCF Réseau may temporarily suspend, where required, the execution of all or part of this Contract, or more specifically, one of the Local Contracts.

SNCF Réseau may in particular be obliged to take special security measures, on a permanent or temporary basis, potentially at the express request of the public authorities, with regard to the protection of people, Service Facilities or sensitive rolling stock, specifically

requiring the implementation of staff access controls. The applicant undertakes to comply with the measures in question.

The BENEFICIARY shall provide, where required, its support to help meet the requirements of the authorities.

By express agreement between the parties, no legal action or claim whatsoever may be initiated or formulated by either of the parties in the event that the execution of this Contract, or more specifically, a Local Contract, is suspended or modified to meet the obligations imposed in connection with defence, public safety & security or public health. A lack of knowledge of these obligations shall not excuse either party of any violation.

## **Article XXVI. COMPLIANCE WITH THE APPLICABLE REGULATION**

The BENEFICIARY undertakes to take all necessary measures to ensure compliance with the railway, social, environmental and any other type of regulation applicable upon the entry into force of the Contract, on the site(s) where the Service Facilities are located.

The BENEFICIARY must ensure that its staff and any person entering the Service Facilities set out under the Local Contracts, at its request, are aware of and strictly comply with the applicable regulations concerning traffic and stabling on SNCF Réseau premises, as well as the authorised itinerary and the particular safety provisions specified in the local operating document.

The BENEFICIARY must also comply, where necessary, with any order or instruction issued by the movements' operative responsible for the operational management of rail movements entering or leaving the site on which the facilities are located.

The BENEFICIARY shall not be entitled to claim any compensation for damage or disruption resulting from its non-compliance with any of these rules.

## **Article XXVII. CONCOMITANT ACTIVITIES IN THE FACILITIES**

The capacity of Service Facilities is limited. As a result, and taking into account SNCF Réseau's obligations regarding access to these facilities, the timetable sections allocated to the applicant under the Local Contracts are allocated on a temporary basis.

In the event that new applicants wish to access the Service Facilities used, and the new requests are incompatible with the timetable sections still available, all players present and wishing to be present in these Service Facilities shall enter into negotiations with the aim of agreeing upon a new distribution of the facilities and the timetable sections for their use that satisfy all players. The new applicant undertakes to participate in these negotiations when requested to do so by SNCF Réseau.

## **Article XXVIII. AUTONOMY OF THE CLAUSES**

In the event that one of the provisions of the Common Contractual Conditions, the National Contract or a Local Contract appears contrary to the applicable legal or regulatory provisions,

including the NS, or if one of the provisions has been found to be invalid by a competent court, all other provisions shall remain fully in force and shall continue to take effect, unless the execution of the Contract becomes impossible.

## **Article XXIX. ELECTION OF DOMICILE**

The BENEFICIARY and SNCF Réseau elect the address of their registered office as domicile for all written correspondence, unless stipulated otherwise. If there is a change in the delegate(s) and/or bank, address, email or telephone details, the applicant must inform the PSEF by registered letter with acknowledgement of receipt, or by any other means permitting confirmation of receipt, respecting a notice period of (15) days.

## **Article XXX. DISPUTES**

### **a) Applicable Law and Language**

The Common Contractual Conditions, the National Contract and the Local Contract are all governed by French law.

All written or oral exchanges between the parties and in particular, technical exchanges relating to operational problems shall be made in French.

In the event of translation, only the French version shall be legally binding.

### **b) Disputes between the parties**

#### *Settlement of disputes via conciliation or court procedures*

Any disputes arising between the parties in the course of the execution of the Common Contractual Conditions, the National Contract or the Local Contract for a Service Facility may be resolved through a conciliation process provided that the dispute does not concern the level of the charges for using the infrastructure and without any prejudice for one or the other party having recourse to emergency procedures in order to protect its rights or to appeal to the Railway and Road Regulation Authority.

A conciliation process is initiated with a registered letter with acknowledgement of receipt addressed to the other party.

The chosen conciliators must be natural persons who are impartial to both parties and who present guarantees of their independence and professionalism, with each party then appointing one such person, unless they agree on a single conciliator, in which case such a conciliator shall act with the costs shared.

In the event that the initiated conciliation process should fail, when appropriate, competence will be given to the Paris courts to examine the disputes, irrespective of the number of defendants or introduction of third parties, even in the event of urgent referrals or emergency injunctions.



# **APPENDIX 1: TEMPLATE OF A BANK GUARANTEE PAYABLE ON FIRST DEMAND**

## **BANK GUARANTEE PAYABLE ON FIRST DEMAND**

The undersigned (*name, first name or business name, legal status, registered office, number and place of registration*) .....

hereby undertakes, irrevocably and unconditionally, on its own behalf and on behalf of (*name, first name or business name, legal status, registered office, number and place of registration of the instructing party*) .....

to pay **SNCF RÉSEAU**, entered under No. B 412 280 737 on the Bobigny trade register, with registered headquarters at 15-17 rue Jean-Philippe Rameau, CS 80001, 93418 La Plaine Saint-Denis Cedex, independently of the legal validity and effects of the Contract of ..... dated ....., on first demand, according to the conditions below and without asserting any exceptions or objections arising from the said Contract or from any related dispute, any amount up to a maximum of (*maximum amount of the guarantee in figures and letters*) ..... Euro.

Modification or removal of factual or legal relations or links that may exist as of this day between ourselves and the originator, may not discharge us from the present guarantee. All the provisions of the present undertaking shall retain their full effect, irrespective of any change in the financial or legal status of the originator.

The request for payment must be sent to us by registered letter with acknowledgement of receipt testifying that the requested amount is owed by the debtor.

Our guarantee will be reduced by each payment made by us under this guarantee.

We shall bear all the costs of this guarantee and its continuations.

This guarantee is governed by French law. For the interpretation and execution of this document, the Paris Commercial Court shall be competent.

Signed in ..... on .....

Signature of the guarantor *preceded by the handwritten phrase: "to guarantee on first demand (in figures and letters) .....Euro"*.